

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **VICE CHAIRMAN DOUG MOOD**, on January 23, 2001
at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stacey Lietgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 107, HB 123, HJ 4
Executive Action: HB 123, HJ 4

HEARING ON HEARING ON HB 107

Sponsor: Representative Bill Eggers, HD 6, Crow Agency

Proponents: Arnold L. Costa, Crow Tribe
Representative Carol Juneau, HD 85
Senator Glenn Roush, SD 43
Leland Top Sky, Chippewa Cree Tribe
Shawn White Wolf, Northern Cheyenne
Jeff Hagener, Fish, Wildlife and Parks
Mike Fox, Fort Belknap
Brian Lipscomb, Confederated Salish and Kootenai
Tribes

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.3}

REPRESENTATIVE BILL EGGERS, HD 6, Crow Agency, stated that, even though this bill had failed in the past legislative session, there had been some changes made as he had been able to talk with Fish, Wildlife and Parks. The purpose of this bill is to allow the Indian communities to not have to pay taxes from the Robinson/Pitman Acts. He explained that these acts relate to the Federal Excise Tax that was imposed upon sporting goods at the point of manufacturing. The federal government taxed the fishing poles and licenses and that money is used to enhance the wildlife habitats around the nation. REP. EGGERS did not feel the Indian communities should have to pay that, as they hunted for food rather than trophy hunting. The Indians have been paying this excise tax for 50 years and have not received anything back. The money goes back to the state and they use it as they see fit. He felt it was a fairness and equity bill because the tax was for those who trophy hunt. The Indians do buy the ammunition and the rifles, but they are a small population in the state, approximately 10%. This bill would establish a Native Natural Resource Council that would be a lot like the one from Fish, Wildlife and Parks that was in the draft bill already. It would represent the tribes, so they would not have to fight for the money, but instead receive the money according to what they would be addressing. The council would work closely with Fish, Wildlife and Parks. The amount of money they would be working with was not a small amount of money, and a portion of that money would be given to Fish, Wildlife and Parks for preservation and habitat restoration on the reservations with the thought that the elk and deer are on the reservations. The Crow Tribe would like

to start a fish hatchery on their river to maintain and improve the environment on the river. The bill suits the needs of the entire state as it improves the economic development and would provide jobs for both non-natives and Natives. The bill would not have a CPA, but would have a biologist to make sure the projects would be done properly. He went on to discuss the fiscal note and to say it was inaccurate. Once the amendments were attached to the bill the fiscal note would actually show zero.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 17.3}

SENATOR GLENN ROUSH, SD 43, said that part of his district is the Blackfeet Nation. The concept of the bill is one that he would endorse. We are dealing with federal dollars in this program. Where he comes from there is a good working relationship developed with hunting and fishing and recreation rights on the Blackfeet Nation's lands with non-enrolled members. A lot of economic development has come as a result of the programs that the Blackfeet Nation have put into place. These people also have to deal with the federal government in relation to Glacier National Park. He has seen tribally-owned businesses developed on the Blackfeet Reservation that would really be helped if they could get funding from this bill in the form of economic development. This is a good bill and something that we can all live with.

REPRESENTATIVE CAROL JUNEAU, HD 85, said that she primarily represents the Blackfeet Nation. This would be a win-win situation. It is going to advance environmental protection for the state of Montana. The state, as well as her community, is very reliant on tourism. The results of this bill will be some positive things for our community in strengthening the environment and providing support to strengthen the environment. This bill should go forward.

Brian Lipscomb, Confederated Salish and Kootenai Tribes, submitted written testimony and supplemental information.
EXHIBIT(feh18a01) EXHIBIT(feh18a02) EXHIBIT(feh18a03)

Arnold Costa, Crow Tribe, submitted written testimony.
EXHIBIT(feh18a04)

Mike Fox, Fort Belknap Indian Reservation, said that his reservation sells many permits to approximately 500 non-member recreationists. They suffer some of the same problems that the

state of Montana does with out-of-state hunters. One of the biggest problems they have is lack of professional expertise of a biologist. With the money provided by this bill they would make sure that they hire a qualified wildlife biologist to provide good information to the Fish and Wildlife Department and to the tribal council so that they can make wise decisions as far as wildlife management. Improved management on the reservations will help Montana as a whole.

Shawn White Wolf, Northern Cheyenne, supports this bill. The investment that you make in our environment and in our economy definitely has rewards for it.

Leland Top Sky, Chippewa Cree Tribe, submitted written testimony. **EXHIBIT**(feh18a05)

Jeff Hagener, Montana Fish, Wildlife and Parks, submitted written testimony. **EXHIBIT**(feh18a06)

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 42.2}

REPRESENTATIVE DEE BROWN thinks that enhancement efforts in this area are great ideas. What percentage of the Montana citizens are Indian populations? **Mr. Hagener** said that it is around 7%. **REP. BROWN** asked, with these enhancement efforts on the reservations, will non-Indians be charged for fishing or hunting within that reservation population. **Mr. Hagener** said that the money here is from the Federal Excise Tax that comes off of sporting goods. As far as the fee structure that is charged on reservation lands, that would be up to the individual tribes to decide.

REP. ROY BROWN asked if some of the money that Montana gets from the excise tax has been used on reservations. **Mr. Hagener** said that they have done some cooperative programs with some of the tribes that has used that money.

REP. BROWN asked the same question of the sponsor. **REP. EGGERS** said that nothing had been done of the size that this program would embark upon.

REPRESENTATIVE AUBYN CURTISS asked how economic development, as far as grants, would fit into this program and if that is an acceptable way of spending the excise money. **REP. EGGERS** said that there are specific projects for which this money can be spent. With environmental and habitat restoration/preservation,

this money would provide jobs for those projects. **REP. CURTISS** had heard mention in the testimony of businesses. **REP. EGGERS** said that this money is not for businesses. It is to put into dirt or animals or studies, et cetera. If we improve our habitat and provide outfitter businesses, for example, for the tribes, it would also provide jobs. These would be spin-off businesses as a result of improving the habitat.

REPRESENTATIVE JOE MCKENNEY asked how the funds would be distributed among the tribes. **REP. EGGERS** said that the only way that this program is going to work is through the cooperation of the tribes with FWP. The Natural Resources Council, which is a body of eight members from the eight tribes in Montana, are going to prepare a grant. They will submit the grant to FWP for review. That will be sent by the state to the federal administrator for review and approval.

REP. ROY BROWN said that page 1, lines 20 - 22 and 25 - 26 give the impression that none of the funds that are received for this federal excise tax are being used on the reservations. It gives the impression that we are doing something wrong. He would like to see the wording changed. **REP. EGGERS** said that what lies behind this resolution was a national class action suit by all of the tribes in the nation because they had been denied their right to participate in this money. This is a national issue. The Indian community feels that they have been taxed without representation for the last 60 years. There is something wrong and that can be seen in the tone. The solution for this problem, in this state, is this bill.

REPRESENTATIVE BOB STORY asked if the main problem is with the way that the federal law is structured or the way the state law is structured. **REP. EGGERS** said that it isn't the way the law is structured; it is the way the process has been structured and the practice of the states in denying Indian tribes access to the money that they have been paying on the excise tax of sporting goods. **REP. STORY** said that, in the fiscal note, it seems to be that the department doesn't have control over the disbursement of any of the funds. It seems that the problem is more with the federal law than with the state. **REP. EGGERS** doesn't believe that the fiscal note is entirely accurate. The disbursement issue relates to license fees; if the state diverts the license fees that it collects, the diversion will cut off the federal funding. That is a completely separate issue.

REP. STORY asked Mr. Hagener what the issue is that is being negotiated. Does it have to do with control of the money or is it the process? **Mr. Hagener** said that it would be both. The

process requires that they go through a certain stage of that and it doesn't specifically allow for a tribal government. He thinks that is why it is a problem around the country.

REPRESENTATIVE DOUG MOOD said that the Indians have certain rights that are guaranteed on their lands. Does Mr. Lipscomb envision the tribes recognizing a need to forego some activity at certain times in order to help build up the herd? **Mr. Lipscomb** said that he did. There are some restrictions in place already.

REP. MOOD asked if those are enforced or are they voluntary.

Mr. Lipscomb said that they are enforced. There are ordinances and regulations in place that are enforced.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 18.5}

REP. EGGERS thinks that we are going to end up with a bill that is streamlined for both the state and the tribes. It will advance the interest of both.

HEARING ON HB 123

Sponsor: **REPRESENTATIVE MICHELLE LEE, HD 26**

Proponents: None

Opponents: John Fitzpatrick, Touch America
Mike Strand, Montana Independent Telecommunications
Systems
Russ Cravens, Qwest Communications
Bill Squires, Montana Telecommunications Association
Mark Baker, AT&T

Opening Statement by Sponsor:

REPRESENTATIVE MICHELLE LEE, HD 26, said that the heart of this bill is on page 6 line 23, "An entity listed in subsection 1 that is using a public right of way as provided in this part shall make the service that entity provides available to all local residents." She wants to include incorporated and unincorporated communities. It is designed to make sure that if someone is using a public right of way, they do have access to the public utility, whatever it may be. Cities need to understand and facilitate the development of telecommunications infrastructure and its uses within their communities. Cities need to work

together and do whatever it takes to get universal broadband implemented and to retain local authority over public property.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 29.5}

John Fitzpatrick, Touch America, said that this bill is quite global in its reach. It has impacts on the energy business, natural gas and electricity. Under this bill, if MPC installs a gas line through a subdivision on the outskirts of a community, the way this is written, a person ten miles down the road can demand natural gas service and MPC will be required to provide that service, even if it doesn't make practical sense. The bill doesn't make it clear enough what services are provided. There are services in the telecommunications area that might be suitable for a large metropolitan area, but unsuited for a rural market. This will force them to provide every service in every community because their fiber runs through their town. The bill fails to recognize that technology has its limits. The companies will face bankruptcy trying to conform with this bill.

Mike Strand, Montana Independent Telecommunications Systems, said that the companies he represent are trying to ensure that the citizens of Montana benefit by the infrastructure. From a network standpoint, the telecommunications network in the United States is a network of networks. Within a given community there may be a number of different networks. All these networks connect together. The problem is that you can't interconnect these networks by splicing two wires together. By bringing a fiber optic cable into Billings to the AT&T building to interconnect to the network of networks, they would be forced to offer services in Billings. They don't want to be forced to compete with existing providers when they are there for the limited purpose of bringing the long distance traffic down. There would be enormous expense involved. He is also concerned about the vagueness of the services included in this bill. These companies can't afford to comply with this bill. Many projects would be abandoned.

Russ Cravens, Qwest Communications, said that this bill may have the opposite effect of what it is trying to accomplish. The Telecommunications Act passed by the federal government limits the fees that can be charged by communities in support of right of way to the cost of managing that right of way. The critical issue for expanding the infrastructure in our communities is really around investment. As we look to build out the high speed network that will connect us to the Internet in more and better

ways, companies that are working on it have far more opportunities and options than they have money to invest. The critical issue in Montana is to try to encourage more investment. It is more important for the fiber optics to go through the community allowing for future use, rather than to go around the community so that it can never be used by them.

Bill Squires, Montana Telecommunications Association, opposes the bill for the reasons previously listed. He offered the following example: The Blackfoot Telephone Cooperative (BTC) is headquartered in Missoula. It provides local service and long distance service to approximately 8500 rural customers. BTC has its main local switch in Missoula. For it to provide its local services to the rural communities, it has to bring that traffic back to its switch in Missoula and send it back out. To do this it utilizes a public right of way. This would require BTC to provide local service in the Missoula area. If they are forced to increase the customer base by that much, they would become a much different company from a federal regulatory standpoint. If they get over a certain size, they will no longer be considered a rural telephone company and they would lose the ability to recover many of their costs from the long distance side of the rate making and would have to dump those costs on the local rate payers. The local payers couldn't afford those kind of cost increases.

Mark Baker, AT&T, also thinks that the bill is overly broad. It will do the opposite of what is intended by the sponsor and will have a chilling effect on broadband services in the state of Montana.

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 7.8}

REPRESENTATIVE BOB STORY asked Mr. Strand if it was the case that you would have a hook up in a community if there was some technical advantage to that. **Mr. Strand** said that it depends on the type of broadband service you are wanting to get. A hook up costs approximately \$250,000, so there has to be a justification for that cost.

Closing by Sponsor:

REP. LEE said that it is important that we start talking about this issue. She isn't asking that the service be made available for free or for a reasonable cost, but she is asking that it be available. A do pass on this bill says that we want on ramps to

the Interstate of technology being built in our state through public right of ways. This is one small way that we can keep our economy vibrant and save our small towns.

HEARING ON HJ 4

Sponsor: REPRESENTATIVE DAN FUKES, HD 15

Proponents: Elaine Graveley, representing the Secretary of State

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE DAN FUKES, HD 15, said that this resolution refers to our recent election, whereas on November 7th the national media called the presidential election at 7:20 p.m. eastern time, prior to poles closing in Florida and also 4 hours prior to polls closing in California, probably sending a lot of people home. We can't let the election process and the foundation of the republican form of our government be manipulated and diminished by the lack of standardized polling hours and an irresponsible and reckless national media. It must be the will of the people that determine the outcome of each election, not the state or federal courts. These are simple changes where we can encourage, in a bi-partisan way, our Congress to restore faith in the election process and our government.

Proponents' Testimony:

Elaine Graveley, representing the Secretary of State, rises in support of this resolution. The Secretary of the State's office sympathizes with this resolution. It is important to standardize polling hours nationwide to prevent reporting of election outcomes in the eastern states and therefore distorting the election outcome in the western states. A good faith action on the part of all states is necessary.

Questions from Committee Members and Responses:

REP. FORRESTER asked how you would standardize the polling hours. REP. FUKES replied that you would take a 24 hour block of time and you allow the election to occur across the country. When the results are in from every area, then the results are announced.

Closing by Sponsor:

REP. FUKES said that all we are doing here is strongly urging Congress to pursue federal legislation to require a standardized polling hours and possibly a media black out.

EXECUTIVE ACTION ON HJ 4

Motion: **REP. DELL** moved that **HJ 4 BE ADOPTED.**

Discussion:

REP. STORY agrees with part of the resolution, but he has a problem with the constitutional amendment part that talks about a media blackout. That is a problematic part of the resolution.

REP. FORRESTER agrees with **REP. STORY**. He would suggest that there be an amendment drafted to strike that portion.

REP. SCHMIDT agrees with the concept, but wonders how practical the standardized polling hours would be.

REP. MOOD thinks that there is a huge amount of frustration with how the reporting was handled in the last election. There may be some free speech issues with this resolution.

REP. STORY said that is why it says that you would go into the amendment of the constitution and make an exception to freedom of the press. He is not going to vote for it.

REP. CURTISS shares the concerns that were addressed.

Motion: **REP. CURTISS** moved that **AMENDMENT TO STRIKE LINE 23 - 24 AND CONSTITUTIONAL AMENDMENT IN THE TITLE OF THE BILL BE ADOPTED.**

Discussion:

REP. STORY said that would make this a resolution asking for standardized polling hours.

Mr. Maly made some recommendations and clarified the amendment.

REP. MOOD will vote for both the amendment and the resolution.

Vote: Motion **carried unanimously.**

Motion/Vote: **REP. CURTISS** moved that **HJ 4 BE ADOPTED AS AMENDED.**
Motion carried 11-1 with Story voting no.

EXECUTIVE ACTION ON HB 123

Motion: REP. DELL moved that HB 123 DO PASS.

Substitute Motion/Vote: REP. SCHMIDT made a substitute motion that HB 123 BE TABLED. Substitute motion carried unanimously.

ADJOURNMENT

Adjournment: 6:20 P.M.

REP. DOUG MOOD, Chairman

ROBYN LUND, Secretary

AC/RL

EXHIBIT (feh18aad)